

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
Amendment of Parts 2 and 90 of the)	PR Docket No. 89-553
Commission's Rules to Provide for the)	
Use of 200 Channels Outside the)	
Designated Filing Areas in the)	
896-901 MHz and the 935-940 MHz Bands)	DOCKET FILE COPY ORIGINAL
Allotted to the Specialized Mobile Radio Pool)	
)	
Implementation of Section 309(j))	
of the Communications Act -)	PP Docket No. 93-253
Competitive Bidding)	
)	
Implementation of Sections 3(n) and 332)	GN Docket No. 93-252
of the Communications Act)	

**COMMENTS OF
GEOTEK COMMUNICATIONS, INC.**

Geotek Communications, Inc. ("Geotek") hereby submits its
comments in response to the Commission's Second Report and Order and Second
Further Notice of Proposed Rule Making ("900 MHz NPRM").

STATEMENT OF INTEREST

Geotek has invested substantial capital and personnel resources in
developing an innovative and spectrally efficient FHMA® technology and in
acquiring 900 MHz spectrum to deliver dispatch services over a wide geographic
area to both fleet operators and small users. The 900 MHz NPRM proposes a

variety of rules and policies directly affecting the 900 MHz SMR frequency band, including proposed procedures for auctioning the remaining spectrum in this band. As an incumbent 900 MHz licensee, Geotek has a strong interest in participating in the 900 MHz SMR auctions and therefore has a direct interest in this proceeding. Geotek's comments in response to the 900 MHz NPRM are set forth below.

COMMENTS

I. Geotek Supports the Commission's Proposed Small Business Definition

Geotek supports the Commission's proposed definition of small business to include entities (including minority and women owned entities) with less than \$3 million in average gross revenues for the preceding three years.¹ In addition, Geotek supports extension of the PCS financial affiliation and structural rules to 900 MHz SMR small businesses to ensure that auction preferences are only awarded to financially qualified applicants.²

The same capital considerations justifying a higher threshold for small businesses applicable to PCS do not exist in the 900 MHz service. In the

¹ 900 MHz NPRM at ¶¶ 135-139.

² Id. at ¶ 139. Under the PCS financial affiliation and structural rules, the revenues and assets of noncontrolling or "passive" investors are excluded for purposes of determining the financial eligibility of small businesses provided that such passive investors hold no more than 25% of the applicant's total equity and voting stock. 47 C.F.R. § 24.709(b).

PCS auction proceeding, the Commission supported its determination that the "small business" threshold should be set at \$40 million principally due to the expected capital requirements for the provision of these services.³ In the 900 MHz service, however, the same capital requirements do not exist.

The acquisition and start-up costs in the 900 MHz service have traditionally been low as compared to other mobile services. The 900 MHz services (e.g. dispatch, and fleet type services, etc.) have traditionally been delivered using a single high power transmitter supported by a limited number of secondary sites.⁴ Thus, the build-out costs are likely to be much lower for 900 MHz SMR making it less likely that small businesses, including minority and women owned business will need Commission support through bidding credits, installment payments and reduced down payments to participate in the proposed auctions for this service.

Further, because this band is occupied, granting credits, etc. to entities with revenues greater than the \$3 million limit will unfairly favor these potential competitors over incumbents who have already spent substantial capital

³ Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in PP Docket No. 93-253, GEN Docket No. 90-314 and ET Docket No. 92-100, FCC 94-219 at ¶¶ 42-48.

⁴ The Commission recognized the network structure of the 900 MHz service in adopting the height and power rules applicable to this service. Third Report and Order in GN Docket No. 93-252, PR Docket No. 93-144 and PR Docket No. 89-553, FCC 94-212 at ¶¶ 153, 157.

and resources to develop the 900 MHz service and encourage speculation in the auction process. Therefore, Geotek supports the \$3 million small business definition and the proposed financial affiliation and structural rules.

II. Bidding Credits Should Only Apply to Applicants for Unencumbered 900 MHz Spectrum

While Geotek agrees with the Commission's proposed 10% bidding credit cap, it opposes its application to incumbered 900 MHz spectrum. The 900 MHz spectrum is unique in that it represents the first spectrum that the Commission proposes to auction where there are "grandfathered" incumbents.⁵ Thus, due to the unique circumstances that exist in the 900 MHz band, the Commission is not compelled to apply any bidding credits to occupied spectrum in order to meet the Budget Act's statutory objectives.⁶

Further, application of bidding credits will unnecessarily distort the auction process, invite speculation and harm existing licensees contrary to the

⁵ In the previous auctions, although the spectrum in limited circumstances was incumbered, the rules allowed for eventual removal of incumbents. See, e.g., 47 C.F.R. §§ 21.50, 22.50 and 94.59. Thus, bidders had an expectation that they would eventually have unencumbered frequencies within their service areas. In the 900 MHz band, incumbents are "grandfathered" which requires different treatment for incumbents and bidders than that applied in other auctions. See Third Report and Order in GN Docket No. 93-252, PR Docket No. 93-144 and PR Docket No. 89-553, FCC 94-212 at ¶¶ 118, 119.

⁶ Pursuant to the Omnibus Budget Reconciliation Act of 1993, the Commission must ensure the economic opportunity of DEs under a system of competitive bidding. See 47 U.S.C. § 309(j)(3).

overriding public interest of ensuring rapid and efficient service to the public at reasonable prices.⁷ The Commission's auction consultant, Professor John McMillan, has found that bidding credits fundamentally distort the bidding process for all bidders by driving prices up for non-DEs while resulting in a relative low percentage of licenses being awarded to a DE.⁸ Because the burden of making bidding credits available on all blocks is great for non-DEs -- specifically for incumbents -- and the benefit of the proposed 10 percent bidding credit is small (i.e., resulting in an estimated 10 percent of the licenses being awarded to DEs), Geotek recommends that the Commission limit bidding credits to unencumbered blocks.⁹

III. The Commission Should Require Upfront Payments for Each License For Which an Applicant Designates an Interest on the FCC Form 175

The 900 MHz NPRM proposes to extend to 900 MHz SMRs the pre-auction application procedures adopted in the Auction Second Report &

⁷ 47 U.S.C. § 151.

⁸ John McMillan, 8 J. of Econ. Persp. 145, 158 (1994). Indeed, Prof. McMillan's article proved prescient when in the Regional Narrowband PCS auction the final bids submitted by both DEs and non-DEs exceeded expectations.

⁹ Geotek respectfully disagrees that "it would be impractical" to determine which blocks are occupied by incumbents for purposes of limiting the DE bidding credit. 900 MHz NPRM at ¶ 130. The information is either on file or could be submitted by the licensees prior to the auction process.

Order.¹⁰ The current auction procedures permit applicants to indicate an interest in any or all licenses subject to an auction in an FCC Form 175. Applicants are not required, however, to submit an upfront payment for each of the licenses in which they expressed an interest. Rather, applicants must submit a "generic" upfront payment that provides them with a maximum "MHz/pops" threshold. During the auction, therefore, bidders may bid on any license(s) in which they expressed an interest on their Form 175 provided they comply with applicable activity rules and do not exceed their own MHz/Pops threshold.

Although the procedure may have been appropriate in the PCS context, it should not be applied to the 900 MHz auctions. The PCS procedure does not recognize the fact that the 900 MHz spectrum is incumbered. There are currently services being provided to the public in the 900 MHz band. In some cases these services are being provided over a system covering a wide-geographic area and in others they are provided using a single transmitter with relatively small coverage. Thus, the MTA licenses available for auction are not fungible. In any given MTA some licenses may represent only fringe areas within the MTA away from any significant population centers or highways whereas others may be substantially (or completely) unencumbered. Potential bidders should be apprised of the service area occupied by the incumbent in order to make a

¹⁰ See 900 MHz NPRM at ¶ 97-107.

rational decision as to the potential value of a particular license and required to specify which licenses it intends to bid on and make upfront payment on a per license basis.

Further, under the PCS auction procedure, no disincentive exists to deter applicants from designating an interest in all 900 MHz blocks subject to auction. Thus, the rule encourages mutual exclusivity (and auction) even for an incumbent frequency block where, in reality, no real interest in the license may exist. Such a result only delays the incumbent's ability to build-out its system and provide service to the public. If there was a reasonable disincentive for potential bidders to arbitrarily or strategically designate an interest in all licenses, then only bona fide applicants would designate a specific frequency block and proceed to auction. All remaining -- none mutually exclusive blocks -- would be available for immediate grant and thereby facilitate rapid delivery of service to the public. To carry out this objective, Geotek recommends that the Commission require applicants to submit upfront payments on a license basis rather than on a generic MHz/pops bases.

Using this approach, applicants would retain the same degree of flexibility as under the existing procedure to pursue secondary strategies during the auction process. In addition, the burden on potential bidders is relatively small as upfront payments would ultimately be applied towards the amount due

for the awarded license(s) or refunded to the applicant if the upfront payment exceeds the amount owed for any license(s) obtained at the auction. Thus, the only difference associated with Geotek's recommendation is that it contains a reasonable disincentive for applicants to designate an interest for licenses in which they have no interest by requiring a corresponding upfront payment for each designation.

CONCLUSION

For the aforementioned reasons, Geotek respectfully requests that the Commission adopt the 900 MHz NPRM's proposed small business definition, limit the availability of bidding credits to unencumbered spectrum, and to alter its pre-auction filing procedures as described herein.

Respectfully submitted by:

GEOTEK COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Michael S. Hirsch", is written over a horizontal line.

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